

A. J. MAURER, JR. ET AL.

IBLA 73-241

Decided March 20, 1974

Appeals from decisions (W 33607, W 33608, W 33609, W 33610, and W 33611) by the Wyoming State Office, Bureau of Land Management, requiring mineral bonds larger in amount than the bonds tendered.

Affirmed.

Mineral Lands: Mineral Reservation--Mining Claims: Surface Uses--
Stock-raising Homesteads

Since one who locates a mining claim on stock-raising homestead lands implies that he intends to reenter upon the land and that he has made a discovery thereon, he is no longer a prospector within the purview of the Stock-raising Homestead Act, and in the absence of consent of, or an agreement with, the entryman or surface

owner, the mineral claimant is required to post a good and sufficient bond to assure compensatory protection to the surface owner.

APPEARANCES: A. J. Maurer, Jr., pro se; Sterling H. Clark, Esq., Clark & Hill, Belle Fourche, South Dakota, for appellant-surface owners.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

A. J. Maurer, Jr., mining locator, and five individual surface owners 1/ have appealed separately from decisions in which the Wyoming State Office, Bureau of Land Management, required the mineral claimant to file five bonds each in an amount larger than the five \$1,000 bonds he had tendered to the United States for the use and benefit of each respective owner of five surface estates. The lands involved were patented pursuant to the provisions of the Stock-raising Homestead Act, 43 U.S.C. §§ 299-301 (1970), with minerals reserved to the United States.

1/ See APPENDIX for a listing of BLM serial numbers, appellant-surface owners, mining claims involved, and amount of bond required by the various decisions below.

Subsequent to the submission of the individual bonds, Maurer filed a copy of a lease executed in January 1972. Therein the mineral claimant granted to a lessee the exclusive right to mine and remove bentonite from certain mining claims, including those listed in the APPENDIX hereto. The Bureau of Land Management examined the land to determine the amount of bond required to secure payment of damages to crops, tangible improvements, and the value of the land for grazing. The mineral claimant and each of the surface owners were informed by separate decisions of the Wyoming State Office of the larger amount of bond required for the protection of each surface owner (See APPENDIX) and of the disapproval of each of the \$1,000 bonds tendered.

Appellant Maurer, in each separate statement of reasons for appeal from each decision requiring a bond in a larger amount, states the mineral lease has been canceled. Copies of the lease cancellation were submitted prior to the filing of the appeals. He states that he now desires to do only prospecting and assessment work on the mining claims involved, but no mining until some future date when a mining contract might be negotiated. He contends, in view thereof, that the amount of the bond should be nominal. He questions whether a bond is even required until such time as actual mining and removal of mineral is about to occur, referring to and quoting portions of the Stock-raising Homestead Act, supra.

Each appellant-surface owner contends that the proposed bond is not large enough to cover probable losses and damages to his land and property in view of the size of the area involved and the kind of operations to be carried out.

All entries made and patents issued pursuant to the Stock-raising Homestead Act reserve to the United States the coal and other minerals in the lands entered and patented. The Act of December 29, 1916, as amended, 43 U.S.C. § 299 (1970), as quoted below, provides remedies for the surface owner for damages to the surface caused by a mining claimant:

* * * Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered and patented, as provided by said sections, for the purpose of prospecting for coal or other minerals therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit

of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the officer designated by the Secretary of the Interior of the local land office of the district wherein the land is situate, subject to appeal to the Secretary of the Interior or such officer as he may designate * * *. [Emphasis supplied.]^{2/}

The clear purpose of the statute is not to restrict prospecting and mining operations on land entered or patented under the Stock-raising Homestead Act, but to assure compensatory protection to the homesteader or surface owner. McMullin v. Magnuson, 78 P.2d 964, 973 (Colo. 1938).

A mineral prospector who locates a mining claim on stock-raising homestead land, by virtue of his mining location, implies that he has made a discovery. Thus, he is no longer a prospector^{3/} and, absent consent of or agreement with the surface owner, prior to reentry he is required to post bond for the compensatory protection of the

^{2/} The Stock-raising Homestead Act is supplemented by the Act of June 21, 1949, 30 U.S.C. § 54 (1970), which enlarged the liability of the mineral claimant to include "any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals."

^{3/} These findings are not intended to be a determination of the validity of the mining claims.

surface owner. Even though Maurer presently intends to reenter only for prospecting (exploration) and assessment work, prior to reentry he must post the bonds required by the Bureau of Land Management decisions. The mining claimant is not permitted to engage in mining operations on the property until a bond in the amount set for the particular property is tendered and approved.

With regard to the assertions of the surface owners alleging insufficiency of the amount of bond set in the respective decisions below, we note that they are merely general statements unsupported by probative evidence. In the absence of evidence to the contrary, we are constrained to affirm the amount of bond required as set by the Wyoming State Office based upon technical examinations of the respective surface estates.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

APPENDIX

BLM Serial W 33607

Mining claims: Deloris Nos. 21 through 28 bentonite placer claims covering certain lands in T. 57 N., R. 63 W., 6th P.M., Wyoming, patented under the Stock-raising Homestead Act, with minerals reserved to the United States.

Surface owner-appellant: Edward B. Foster.

Mineral bond in the amount of \$1,000 tendered by A. J. Maurer, Jr., disapproved and a mineral bond in the amount of \$40,000 required by decision of December 1, 1972.

BLM Serial W 33608

Mining Claims: Deloris Nos. 26 and 28 bentonite placer claims covering certain lands in T. 57 N., R. 63 W., 6th P.M., Wyoming, patented under the Stock-raising Homestead Act, with minerals reserved to the United States.

Surface owner-appellant: A. V. Edsall.

Mineral bond in the amount of \$1,000 tendered by A. J. Maurer, Jr., disapproved and a mineral bond in the amount of \$6,000 required by decision of December 1, 1972.

BLM Serial W 33609

Mining claims: Deloris Nos. 29 and 30 bentonite placer claims covering certain lands in T. 57 N., R. 63 W., 6th P.M., Wyoming, patented under the Stock-raising Homestead Act, with minerals reserved to the United States.

Surface owners-appellants: Frank H. and Helen M. Ridinger.

Mineral bond in the amount of \$1,000 tendered by A. J. Maurer, Jr., disapproved and a mineral bond in the amount of \$45,000 required by decision of December 1, 1972.

BLM Serial W 33610

Mining claims: Deloris Nos. 16 through 19 bentonite placer claims covering certain lands in T. 58 N., R. 64 W., 6th P.M., Wyoming, patented under the Stock-raising Homestead Act, with minerals reserved to the United States.

Surface owner-appellant: T. J. Maupin

Mineral bond in the amount of \$1,000 tendered by A. J. Maurer, Jr., disapproved and a mineral bond in the amount of \$36,000 required by decision of December 4, 1972.

BLM Serial W 33611

Mining claims: Deloris Nos. 4 through 14 bentonite placer mining claims covering certain lands in T. 58 N., R. 64 W., 6th P.M., Wyoming, patented under the Stock-raising Homestead Act, with minerals reserved to the United States.

Surface owner-appellant: Wyotana Ranch, Inc.

Mineral bond in the amount of \$1,000 tendered by A. J. Maurer, Jr., disapproved and a mineral bond in the amount of \$51,000 required by decision of December 4, 1972.

JUDGE THOMPSON CONCURRING:

I agree that the amount of the bonds to be furnished by a locator of a mining claim asserting rights under the mining laws does not depend upon his proposed activities upon the patented land, but rather, upon possible damages based upon the value of the crops and surface improvements of the surface owner within the mining claims, as required under the Stock-raising Homestead Act, 43 U.S.C. § 299 (1970), and the grazing value of the land, as required by the Act of June 21, 1949, 30 U.S.C. § 54 (1970). See L. W. Hansen, A-31029 (December 30, 1968). This Department is charged with determining the amount of the bonds. Such a determination, however, is not a finding that the mining claims are valid. For the purpose of setting the amount of the bond, we must assume that the claims were properly located for locatable minerals. 1/

The issue of the amount of the bonds turns, therefore, on whether they properly reflect the value of the crops, surface improvements of the surface owner and grazing value of the land. Appellant has made no showing that the bonds are in excess of such

1/ The claims here are located for bentonite. A determination whether such claims are valid is beyond the scope of this decision. I note, however, that only bentonite which can be marketed profitably for commercial purposes for which common clays cannot be used, is locatable under the mining laws. United States v. Gunn, 7 IBLA 237, 79 I.D. 588 (1972). A contest proceeding would be necessary to determine whether these claims are valid.

value. I agree that the general statements of the surface owners, without any information or data to show a higher value, are insufficient to show error in the Bureau's appraised value. Accordingly, there is no reason to disturb the Bureau's decisions in this regard.

Joan B. Thompson
Administrative Judge

